

## § 10.52

potential to place) trade buyer independence at risk by means of a tie or link between the industry member and trade buyer or by any other means of industry member control over the trade buyer, and

(2) Such practice results in the trade buyer purchasing less than it would have of a competitor's product.

(b) Section 10.52 lists practices that create a tie or link that places trade buyer independence at risk. Section 10.53 is reserved and will list practices not resulting in exclusion. Section 10.54 lists the criteria used for determining whether other practices can put trade buyer independence at risk.

### § 10.52 Practice which puts trade buyer independence at risk.

The practice specified in this section is deemed to place trade buyer independence at risk within the description of exclusion in § 10.51: Industry member payments of money to the employee(s) of a trade buyer without the knowledge or consent of the trade buyer-employer in return for the employee agreeing to order distilled spirits, wine, or malt beverages from the industry member. The practice enumerated here is an example and does not constitute a complete list of those situations which result in such control.

### § 10.53 Practices not resulting in exclusion. [Reserved]

### § 10.54 Criteria for determining trade buyer independence.

The criteria specified in this section are indications that a particular practice between an industry member and an officer, employee, or representative of a trade buyer, other than those in § 10.52, places trade buyer independence at risk. A practice need not meet all of the criteria specified in this section in order to place trade buyer independence at risk.

(a) The practice restricts or hampers the free economic choice of a trade buyer to decide which products to purchase or the quantity in which to purchase them for sale to retailers and consumers.

(b) The industry member obligates the trade buyer to participate in the promotion to obtain the industry member's product.

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(c) The trade buyer has a continuing obligation to purchase or otherwise promote the industry member's product.

(d) The trade buyer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member's products.

(e) The practice involves the industry member in the day-to-day operations of the trade buyer. For example, the industry member controls the trade buyer's decisions on which brand of products to purchase, the pricing of products, or the manner in which the products will be displayed on the trade buyer's premises.

(f) The practice is discriminatory in that it is not offered to all trade buyers in the local market on the same terms without business reasons present to justify the difference in treatment.

## PART 11—CONSIGNMENT SALES

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## Alcohol and Tobacco Tax and Trade Bureau, Treasury

## § 11.6

### EXCHANGES AND RETURNS FOR REASONS NOT CONSIDERED ORDINARY AND USUAL

11.45 Overstocked and slow-moving products.

11.46 Seasonal products.

AUTHORITY: 15 U.S.C. 49-50; 27 U.S.C. 202 and 205.

SOURCE: T.D. ATF-74, 45 FR 63258, Sept. 23, 1980, unless otherwise noted.

### Subpart A—Scope of Regulations

#### § 11.1 General.

The regulations in this part, issued pursuant to section 105 of the Federal Alcohol Administration Act (27 U.S.C. 205), specify arrangements which are consignment sales under section 105(d) of the Act and contain guidelines concerning return of distilled spirits, wine and malt beverages from a trade buyer. This part does not attempt to enumerate all of the practices prohibited by section 105(d) of the Act. Nothing in this part shall operate to exempt any person from the requirements of any State law or regulation.

[T.D. ATF-364, 60 FR 20427, Apr. 26, 1995]

#### § 11.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

#### § 11.3 Application.

(a) *General.* The regulations in this part apply to transactions between industry members and trade buyers.

(b) *Transactions involving State agencies.* The regulations in this part apply to transactions involving State agencies operating as retailers or wholesalers.

#### § 11.4 Jurisdictional limits.

(a) *General.* The regulations in this part apply where:

(1) The industry member sells, offers for sale, or contracts to sell to a trade buyer engaged in the sale of distilled spirits, wines, or malt beverages, or for any such trade buyer to purchase, offer to purchase, or contract to purchase, any such products on consignment or under conditional sale or with the privilege of return or on any basis other than a bona fide sale, or where any part of such transaction involves,

directly or indirectly, the acquisition by such person from the trade buyer or the agreement to acquire from the trade buyer other distilled spirits, wine, or malt beverages; and,

(2) If: (i) The sale, purchase, offer or contract is made in the course of interstate or foreign commerce; or

(ii) The industry member engages in using the practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products; or

(iii) The direct effect of the sale, purchase, offer or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce.

(b) *Malt beverages.* In the case of malt beverages, this part applies to transactions between a retailer in any State and a brewer, importer, or wholesaler of malt beverages inside or outside such State only to the extent that the law of such State imposes requirements similar to the requirements of section 5(d) of the Federal Alcohol Administration Act (27 U.S.C. 205(d)), with respect to similar transactions between a retailer in such State and a brewer, importer, or wholesaler of malt beverages in such State.

#### § 11.5 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.11, Delegation of the Administrator's Authorities in 27 CFR Part 11, Consignment Sales. You may obtain a copy of this order by accessing the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

[T.D. TTB-44, 71 FR 16924, Apr. 4, 2006]

#### § 11.6 Administrative provisions.

(a) *General.* The Act makes applicable the provisions including penalties of sections 49 and 50 of Title 15, United States Code, to the jurisdiction, powers and duties of the Administrator under this Act, and to any person (whether or

not a corporation) subject to the provisions of law administered by the Administrator under this Act.

(b) *Examination and subpoena.* Any appropriate TTB officer shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against. An appropriate TTB officer shall also have the power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation, upon a satisfactory showing the requested evidence may reasonably be expected to yield information relevant to any matter being investigated under the Act.

[T.D. ATF-364, 60 FR 20427, Apr. 26, 1995. Redesignated and amended by T.D. ATF-428, 65 FR 52021, Aug. 28, 2000]

## Subpart B—Definitions

### § 11.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

*Act.* The Federal Alcohol Administration Act.

*Administrator.* The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

*Appropriate TTB officer.* An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.11, Delegation of the Administrator's Authorities in 27 CFR Part 11, Consignment Sales.

*Exchange.* The transfer of distilled spirits, wine, or malt beverages from a trade buyer to an industry member with other products taken as a replacement.

*Industry member.* Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler of distilled

spirits, wine or malt beverages, or as a bottler or warehouseman and bottler, of distilled spirits.

*Product.* Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

*Retailer.* Any person engaged in the sale of distilled spirits, wine or malt beverages to consumers. A wholesaler who makes incidental retail sales representing less than five percent of the wholesaler's total sales volume for the preceding two-month period shall not be considered a retailer with respect to such incidental sales.

*Return.* The transfer of distilled spirits, wine, or malt beverages from a trade buyer to the industry member from whom purchased, for cash or credit.

*Trade buyer.* Any person who is a wholesaler or retailer of distilled spirits, wine or malt beverages.

[T.D. ATF-74, 45 FR 63258, Sept. 23, 1980, as amended by T.D. ATF-364, 60 FR 20427, Apr. 26, 1995; T.D. ATF-428, 65 FR 52021, Aug. 28, 2000; T.D. TTB-44, 71 FR 16924, Apr. 4, 2006]

## Subpart C—Unlawful Sales Arrangements

### § 11.21 General.

It is unlawful for an industry member to sell, offer for sale, or contract to sell to any trade buyer, or for any such trade buyer to purchase, offer to purchase, or contract to purchase any products (a) on consignment; or (b) under conditional sale; or (c) with the privilege of return; or (d) on any basis other than a bona fide sale; or (e) if any part of the sale involves, directly or indirectly, the acquisition by such person of other products from the trade buyer or the agreement to acquire other products from the trade buyer. Transactions involving the bona fide return of products for ordinary and usual commercial reasons arising after the product has been sold are not prohibited.

### § 11.22 Consignment sales.

Consignment sales are arrangements wherein the trade buyer is under no obligation to pay for distilled spirits, wine, or malt beverages until they are sold by the trade buyer.

**§ 11.23 Sales conditioned on the acquisition of other products.**

(a) *General.* A sale in which any part of the sale involves, directly or indirectly, the acquisition by the industry member from the trade buyer, or the agreement, as a condition to present or future sales, to accept other products from the trade buyer is prohibited.

(b) *Exchange.* The exchange of one product for another is prohibited as a sales transaction conditioned on the acquisition of other products. However, the exchange of a product for equal quantities (case for case) of the same type and brand of product, in containers of another size is not considered an acquisition of "other" products and is not prohibited if there was no direct or implied privilege of return extended when the product was originally sold. Industry members may make price adjustments on products eligible for exchange under this paragraph.

**§ 11.24 Other than a bona fide sale.**

"Other than a bona fide sale" includes, but is not limited to, sales in connection with which the industry member purchases or rents the display, shelf, storage or warehouse space to be occupied by such products at premises owned or controlled by the retailer.

[T.D. ATF-364, 60 FR 20427, Apr. 26, 1995]

**Subpart D—Rules for the Return of Distilled Spirits, Wine, and Malt Beverages****§ 11.31 General.**

(a) Section 5(d) of the Act provides, in part, that it is unlawful to sell, offer to sell, or contract to sell products with the privilege of return for any reason, other than those considered to be "ordinary and usual commercial reasons" arising after the product has been sold. Sections 11.32 through 11.39 specify what are considered "ordinary and usual commercial reasons" for the return of products, and outline the conditions and limitations for such returns.

(b) An industry member is under no obligation to accept the return of products for the reasons listed in §§ 11.32 through 11.39.

**EXCHANGES AND RETURNS FOR ORDINARY AND USUAL COMMERCIAL REASONS****§ 11.32 Defective products.**

Products which are unmarketable because of product deterioration, leaking containers, damaged labels or missing or mutilated tamper evident closures may be exchanged for an equal quantity of identical products or may be returned for cash or credit against outstanding indebtedness.

[T.D. ATF-364, 60 FR 20427, Apr. 26, 1995]

**§ 11.33 Error in products delivered.**

Any discrepancy between products ordered and products delivered may be corrected, within a reasonable period after delivery, by exchange of the products delivered for those which were ordered, or by a return for cash or credit against outstanding indebtedness.

**§ 11.34 Products which may no longer be lawfully sold.**

Products which may no longer be lawfully sold may be returned for cash or credit against outstanding indebtedness. This would include situations where, due to a change in regulation or administrative procedure over which the trade buyer or an affiliate of the trade buyer has no control, a particular size or brand is no longer permitted to be sold.

[T.D. ATF-364, 60 FR 20428, Apr. 26, 1995]

**§ 11.35 Termination of business.**

Products on hand at the time a trade buyer terminates operations may be returned for cash or credit against outstanding indebtedness. This does not include a temporary seasonal shutdown (see § 11.39).

[T.D. ATF-364, 60 FR 20428, Apr. 26, 1995]

**§ 11.36 Termination of franchise.**

When an industry member has sold products for cash or credit to one of its wholesalers and the distributorship arrangement is subsequently terminated, stocks of the product on hand may be returned for cash or credit against outstanding indebtedness.

## § 11.37

### § 11.37 Change in product.

A trade buyer's inventory of a product which has been changed in formula, proof, label or container (subject to § 11.46) may be exchanged for equal quantities of the new version of that product.

### § 11.38 Discontinued products.

When a producer or importer discontinues the production or importation of a product, a trade buyer's inventory of that product may be returned for cash or credit against outstanding indebtedness.

### § 11.39 Seasonal dealers.

Industry members may accept the return of products from retail dealers who are only open a portion of the year, if the products are likely to spoil during the off season. These returns will be for cash or for credit against outstanding indebtedness.

EXCHANGES AND RETURNS FOR REASONS  
NOT CONSIDERED ORDINARY AND USUAL

### § 11.45 Overstocked and slow-moving products.

The return or exchange of a product because it is overstocked or slow-moving does not constitute a return for "ordinary and usual commercial reasons."

### § 11.46 Seasonal products.

The return or exchange of products for which there is only a limited or seasonal demand, such as holiday decanters and certain distinctive bottles, does not constitute a return for "ordinary and usual commercial reasons."

## PART 12—FOREIGN NONGENERIC NAMES OF GEOGRAPHIC SIGNIFICANCE USED IN THE DESIGNATION OF WINES

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12.3 Procedure for recognition of foreign distinctive designations.

### Subpart B [Reserved]

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### Subpart C—Foreign Nongeneric Names of Geographic Significance

12.21 List of examples of names by country.

### Subpart D—Foreign Nongeneric Names Which Are Distinctive Designations of Specific Grape Wines

12.31 List of approved names by country.

AUTHORITY: 27 U.S.C. 205.

SOURCE: T.D. ATF-296, 55 FR 17967, Apr. 30, 1990, unless otherwise noted.

### Subpart A—General Provisions

#### § 12.1 Scope.

The regulations in this part relate to foreign names of geographic significance used in the designation of wines which are recognized as nongeneric under 27 CFR 4.24, and include those nongeneric names which the Administrator has found to be distinctive designations of wine, as defined in § 4.24(c)(1) of this chapter.

#### § 12.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

#### § 12.3 Procedure for recognition of foreign distinctive designations.

(a) *Procedure.* Under the provisions of 27 CFR 70.701(c), the Administrator may approve petitions requesting TTB recognition of names of geographic significance which are the distinctive designations of specific wines under § 4.24(c) of this chapter.

(b) *Format.* A petition shall be in the form of a letterhead application requesting that TTB recognize the distinctive wine designation listed in their petition. The petition should present evidence to support a finding that the geographic designation is known to the U.S. consumer and trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines. All background material and supporting data submitted will be made part of the application and will be considered in the review process.

[T.D. ATF-296, 55 FR 17967, Apr. 30, 1990, as amended by T.D. ATF-463, 66 FR 42733, Aug. 15, 2001]